

**STATE OF INDIANA
Board of Tax Review**

DAVID R. WEBB COMPANY, INC)	On Appeal from the Johnson County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	Petition for Correction of Error, Form 133
v.)	Petition Nos.: See attached list
)	Parcel Nos.: 91003444040/00
JOHNSON COUNTY PROPERTY TAX)	91003412049/00
ASSESSMENT BOARD OF APPEALS)	91003412047/00
And BLUE RIVER TOWNSHIP)	
ASSESSOR)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issues

1. Whether the General Commercial Kit schedule should be used to price the subject buildings.
2. Whether the assigned depreciation is correct.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-12, Fred McCarter, with C.M. I., on behalf of David R. Webb Company, Inc. (Petitioner), filed thirteen Form 133 petitions requesting a review by the State. The Johnson County Property Tax Assessment Board of Appeals' (PTABOA) Assessment Determinations on the underlying Form 133 petitions are dated December 20 and 21, 2001. The Form 133 petitions were appealed to the State on January 16, 2002.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 21, 2002, before Administrative Law Judge Paul Stultz. Testimony and exhibits were received into evidence. Mr. Fred McCarter represented the Petitioner. Mr. Tim Barry appeared as an expert witness for the Petitioner. Ms. Sandra Pendleton, Blue River Township Assessor, represented the Township Assessor's Office. Mr. Mark Alexander represented the Johnson County Assessor's Office.

4. At the hearing, the Form 133 petitions were made a part of the record and labeled as Board's Exhibit A. Notices of Hearing on Petition are labeled as Board's Exhibit B. In addition, the following exhibits were submitted to the State:
Petitioner's Exhibit 1 – two page summary of six Tax Court cases
Petitioner's Exhibit 2 – copy of *Susan J. Barker v. State Board of Tax Commissioners*, 712 N.E. 2d 563 (Ind. Tax 1999).
Petitioner's Exhibit 3 - copy of *Donald G. Morris v. State Board of Tax Commissioners*, 712 N.E. 2d 1120 (Ind. Tax 1999).
Petitioner's Exhibit 4 - copy of *King Industrial Corp. v. State Board of Tax Commissioners*, 699 N.E. 2d 338 (Ind. Tax 1998).

Petitioner's Exhibit 5 - copy of *Componx, Inc. v. State Board of Tax Commissioners*, 683 N.E. 2d 1372 (Ind. Tax 1997).

Petitioner's Exhibit 6 - copy of *Damon Corp. v. State Board of Tax Commissioners*, 738 N.E.2d 1102 (Ind. Tax 2000).

Petitioner's Exhibit 7 - copy of *CDI, Inc. v. State Board of Tax Commissioners*, 725 N.E.2d 1015 (Ind. Tax 2000).

Petitioner's Exhibit 8- copy of *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).

Petitioner's Exhibit 9 - copy of *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 740 N.E.2d 598 (Ind. Tax 2000)

Petitioner's Exhibit 10 - copy of *Barth, Inc. v. State Board of Tax Commissioners*, 705 N.E.2d 1084 (Ind. Tax 1998).

Petitioner's Exhibit 11 – copy of handout from a January 25, 1995, training session conducted by State employee Terry Knee

Petitioner's Exhibit 12 – copy of State Instructional Bulletin 91-8

Petitioner's Exhibit 13 – copy of 50 IAC 2.2-11-7 Commercial and industrial depreciation tables

Petitioner's Exhibit 14 – three photos of building on parcel #91003412047/00

Petitioner's Exhibit 15 – copy of light pre-engineered kit building checklist for parcel # 91003412047/00

Petitioner's Exhibit 16 - three photos of building on parcel #91003444040/00

Petitioner's Exhibit 17 - copy of light pre-engineered kit building checklist for parcel # 91003444040/00

Petitioner's Exhibit 18 - three photos of building on parcel #91003412049/00

Petitioner's Exhibit 19 - copy of light pre-engineered kit building checklist for parcel # 91003412049/00

5. These appeals pertain to three different parcels that are owned by the Petitioner. The subject properties are located on Thompson Street and at the intersection of Naomi and North Kyle Street, Edinburgh, Blue River Township, Johnson County.
6. The Administrative Law Judge did not view the subject properties.

7. At the hearing, the parties agreed the years under appeal and the values of record for the three parcels are:

Parcel # 91003444040/00

Years – 1996, 1997, 1998, 1999, and 2000

Land for all years = \$6,330

Improvements for all years = \$171,870

Parcel # 91003412047/00

Years –1997, 1998, 1999, and 2000

Land for all years = \$26,800

Improvements for all years = \$337,430

Parcel # 91003412049/00

Years –1997, 1998, 1999, and 2000

Land for all years = \$40,570

Improvements for all years = \$511,700

8. Mr. McCarter testified that his compensation for representing the Petitioner is based on a contingent fee.
9. Mr. Barry testified he was compensated on a hourly rate.
10. Mr. McCarter provided three disclosure statements, one for each parcel under consideration, on May 23, 2002, by facsimile. The statements were made a part of the record and labeled Petitioner's Exhibit 20.

11. At the hearing, Mr. Alexander was requested to provide copies of the subject property record cards (PRC) for the three parcels. The pertinent PRC's were received from Mr. Alexander on June 20, 2002, and were made a part of the record and labeled Respondent's Exhibit 1.
12. In regard to parcel # 91003444040/00, the assessed values per the PRC provided by Mr. Alexander for the years 1996, 1997, 1998, 1999, and 2000 are not the same as the values of record agreed upon during the hearing. The PRC does not reflect the changes made by the Johnson County PTABOA for parcel #91003444040/00.

**Issue No. 1 - Whether the General Commercial Kit
schedule should be used to price the subject buildings.**

13. The buildings were assessed using the General Commercial Industrial (GCI) schedule. The Petitioner contended that the buildings should have been assessed from the General Commercial Kit (GCK) schedule.
14. Mr. McCarter asserted that the selection of schedule could be addressed on the Form 133 petitions. In support of this argument, Mr. McCarter presented Tax Court cases that, he contended, demonstrate that the Form 133 petition is an appropriate vehicle for appeals seeking the GCK adjustment. (Petitioner's Ex. 2 through 10).
15. Mr. McCarter presented photographs of the buildings on the three parcels. He also presented a kit building checklist completed by Mr. Barry for each parcel, contending that the subject buildings had most of the identifiers on the checklist. Mr. McCarter testified the checklist was taken from the State Instructional Bulletin 91-8, which was developed to help assessors identify kit type buildings.
Petitioner's Ex.15, 17, and 19.

16. Regarding the building on parcel 9100344040/00, the following testimony was given:
 - a. Mr. McCarter testified that:
 - i. the exterior photo shows the building has a flute type concrete block exterior wall;
 - ii. the cost associated with the concrete block wall (\$44,000) would suggest applying a C + 1 grade; and
 - iii. the subject building is a name brand kit building.
 - b. Mr. Barry testified that the subject building:
 - i. was built to minimum standards per the Uniform Building Code;
 - ii. was a light pre-engineered building; and
 - iii. that the concrete block wall is not load bearing.
17. Regarding building on parcel 91003412049/00, Mr. McCarter testified that the 105,849 square foot building did not have any concrete walls or other extras, making it more evident that the building was a kit type building.
18. Mr. Barry asserted that this building was a light pre-engineered building.
19. Regarding building on parcel 91003412047/00, the following testimony was given:
 - a. that 91,140 square feet of the total 110,540 square feet in the building is best described as a kit building. *McCarter testimony*
 - b. the concrete block used in the building cost about \$35,000 and would not warrant a C+1 grade. *McCarter testimony*
 - c. the concrete block wall is not load bearing. *Barry testimony.*
 - d. the subject building was a light pre-engineered building. *Barry testimony.*
20. Mr. Alexander testified to the following:
 - a. the PTABOA considered schedule selection, GCI or GCK, as a subjective judgement that cannot be addressed on a 133 Petition, and Mr. McCarter did not provide any court case for tax years 1995 or subsequent that

supported the position that selection of the GCK schedule versus the GCI schedule was an objective judgement.

- b. based on Mr. Barry's testimony and the PTABOA's on-site inspection, objective errors were corrected.
- c. the State Instructional Bulletin 91-8 referred to the 1989 reassessment and is not relevant to the current appeals.

Issue No. 2 - Whether the depreciation is correct.

21. The PTABOA determined that the buildings should be depreciated from the 40 year life expectancy table. The Petitioner contended that the subject buildings should be depreciated from the 30 year life expectancy table.
22. Mr. McCarter alleged that there is no question that the subject buildings are light pre-engineered structures that should be depreciated from the thirty year life table regardless if they are assessed from the GCK or the GCI schedule.
23. Mr. McCarter contended the court cases previously introduced during the hearing support his argument that an error in depreciation is an objective error that can be corrected on a Form 133 petition.
24. Mr. Barry testified that all subject buildings are light pre-engineered structures.
25. Mr. Alexander claimed that the PTABOA considered selection of the correct depreciation table as a subjective judgement that cannot be addressed on a Form 133 petition.

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 133 petition filed with the County, or issues that are raised as a result of the PTABOA's action on the Form 133 petition. Ind. Code § 6-1.1-15-12. In addition, Indiana courts have

long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 133 process, the levels of review are clearly outlined by statute. The County Auditor can correct certain errors alleged on the Form 133 petition. Ind. Code § 6-1.1-12. Two local officials can also correct error. *Id.* If these local officials do not correct alleged errors, then the Form 133 is referred to and reviewed by the PTABOA. *Id.* The PTABOA's decision may then be appealed to the State. *Id.* Taxpayers who raise new issues at the State level of appeal circumvent review of the issues by the local officials and the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 133 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 133 petition filed with the County Auditor.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-12.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).

5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d

816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.

9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State’s final determination merely because the taxpayer demonstrates flaws in it).

C. Review of Assessments After Town of St. John V

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property’s market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

D- Witness Compensation

18. The State's position is that it has the right to make general inquiry regarding, and to consider, the method by which a witness is compensated. Information about the witness's fee can be relevant and necessary in order to evaluate the potential partiality of the witness. A contingent fee arrangement may be considered to inherently affect the objectivity of a witness. The State believes it appropriate to consider the potential of such an arrangement to improperly motivate the witness and adversely affect the reliability of the testimony. It is for these reasons that the State will consider the method of witness compensation in the process of determining the credibility and weight to be given to testimony of a witness whose fee is contingent on the outcome of the issues that he or she is testifying about. This position is supported by the discussion in the case of *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993).

E. Issue No. 1 - Whether the General Commercial Kit schedule should be used to price the subject buildings.

19. The buildings were assessed using the General Commercial Industrial (GCI) schedule. The Petitioner contended that the buildings should have been assessed from the General Commercial Kit (GCK) schedule.
20. Reproduction Cost minus Depreciation equals True Tax Value. Prior to tax year 1995, the reproduction cost for commercial and industrial property was the base rate for the model selected less adjustments. 50 IAC 2.1-4-3 and -5. The State's Instructional Bulletin 91-8 provided for a 50% reduction in the base rate for qualifying kit buildings. State Instructional Bulletin 91-8 stated, "These amendments allowed for a fifty percent (50%) reduction in the base rate of qualifying structures priced from the General Commercial Mercantile, General Commercial Industrial and the Poultry Confinement Building Pricing Schedules." For appeals prior to the 1995 assessment date, the methodology used to make

this type of adjustment entailed making a fifty percent (50%) reduction to the base rate of the existing pricing schedule that was in use at the time. The change was an objective issue with a mathematical solution and could be addressed using the Form 133 petition.

21. As cited in the *Indiana Administrative Code* (2001), 50 IAC 2.1, “real property assessment” was repealed by the State Board of Tax Commissioners, filed September 14, 1992 (16 IR 662) effective March 1, 1995 and replaced by the “real property assessment” 50 IAC 2.2. The State’s 1995 Regulation, 50 IAC 2.2, eliminated the “kit” building adjustments described in the State’s Instructional Bulletins 91-8 and 92-1 for assessment years 1995 and thereafter.
22. Under the current regulation, the reproduction cost for commercial and industrial property is the base rate for the selected association grouping less adjustments, 50 IAC 2.2-10-6.1 and 2.2-11-6. (The term “association grouping was introduced by the 1995 regulation. Previously, the term “model” was the commonly used descriptive term.)
23. 50 IAC 2.2-10-6.1 identifies four (4) association groupings to be used for the selection of the appropriate base rate. These four (4) groupings are: (1) General Commercial Mercantile (GCM), (2) General Commercial Industrial (GCI), (3) General Commercial Residential (GCR), and (4) General Commercial Kit (GCK).
24. The GCK association grouping was added to the 1995 Regulation to value pre-engineered and pole framed buildings used for commercial and industrial purposes. Selecting the GCK association grouping instead of another grouping is not a straightforward finding of fact. Rather, subjective judgment is used to select the appropriate association grouping. First, as part of the assessment analysis, the assessor must necessarily decide whether the physical attributes of the building under review more appropriately fall within the purview of one association grouping or another. Also, in deciding whether the GCK association grouping should be used, the assessor must decide whether the building under

review is a pre-engineered building and whether the frame type is light metal/wood siding. 50 IAC 2.2-11-5, Schedule A4.

25. Errors arising from an assessor's judgment are not the type of errors that can be corrected by way of a Form 133 petition. *Hatcher v. State Board of Tax Commissioners*, 561 N.E. 2d 852 (Ind. Tax 1990).
26. A Form 133 petition is available only for those errors that can be corrected without resort to subjective judgment. *Reams v. State Board of Tax Commissioners*, 620 N.E. 2d 758 (Ind. Tax 1993).
27. The Tax Court cases cited by the Petitioner all pertain to pre-1995 kit adjustments. These cases do not support the Petitioner's contention that the selection of schedule is an objective issue.
28. Schedule selection involves subjective judgment. Therefore, a Form 133 petition is not the appropriate petition with which to challenge an alleged error made in the selection of schedules. In *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113, 1116 (Ind. Tax 1997), the Tax Court held:

Clearly, the assessor must use his judgment in determining which schedule to use. It is not a decision automatically mandated by a straightforward finding of fact. The assessor must consider the property in question, including its physical attributes and predominant use, and make a judgment as to which schedule is most appropriate. Just as the assessor must use subjective judgment to determine which base price model to employ within these schedules, so too the assessor must exercise his or her discretion to determine which schedule to use. In some cases, this decision will be a closer call than in others, but regardless of the closeness of the judgment, it remains a judgment committed to the discretion of the assessor. (Citations omitted).

29. For all reasons set forth above, the selection of schedule does not qualify for review on a Form 133 petition. No changes in the assessments are made as a result of this issue.

F. Issue No. 2 - Whether the depreciation is correct.

30. The PTABOA determined that the buildings should be depreciated from the 40 year life expectancy table. The Petitioner contended that the subject buildings should be depreciated from the 30 year life expectancy table.
31. “**Physical depreciation** is determined by the combination of age and condition. Each type of building has a life expectancy that is determined by the building components and the use of the building. By applying these factors, the correct physical depreciation can be applied to the building. The following tables are used to depreciate commercial and industrial buildings:
- (1) The thirty (30) year life expectancy table.
 - (2) The forty (40) year life expectancy table.
 - (3) The fifty (50) year life expectancy table.
 - (4) The sixty (60) year life expectancy table.”
- 50 IAC 2.2-10-7(c) (Emphasis is contained in the original).
32. The Tax Court cited by the Petitioner, *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 740 N.E.2d 598 (Ind. Tax 2000), involved the issue of physical depreciation raised on a Form 131 petition. The Petitioner failed to establish the relevance of *Fleet* to the Form 133 petitions filed in this appeal.
33. The Tax Court has, however, previously addressed the issue of physical depreciation raised on a Form 133 petition. In *Barth, Inc. v. State Board of Tax Commissioners*, 699 N.E. 2d 800, 808 (Ind. Tax 1998), the Tax Court held:
- “If the buildings at issue qualify for the kit adjustment then they would also automatically qualify for the 30 year life expectancy table. If the subject buildings

do not qualify for the kit adjustment, no alleged error in the application of the life expectancy tables may be corrected.”

34. Because there has been no determination in these Form 133 appeal petitions that the buildings are light pre-engineered structures, the life expectancy table used to compute depreciation may not be changed. There is no change in the assessment as a result of this issue.

SUMMARY OF STATE DETERMINATION

Determination of ISSUE 1: *Whether the General Commercial Kit schedule should be used to price the subject buildings.*

35. The selection of schedule is a subjective determination that may not be addressed on a Form 133 petition. There is no change in the assessment as a result of this issue.

Determination of ISSUE 2: *Whether the assigned depreciation is correct.*

36. Because there has been no determination that the buildings qualify for pricing from the GCK schedule, the life expectancy table used to compute depreciation may not be changed. There is no change in the assessment as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review